

19.55 Non-conformance

19.55.005	User guide
19.55.010	Purpose
19.55.015	General
19.55.020	Abatement of illegal uses, structures or site improvements
19.55.025	Nonconforming and continuing uses
19.55.030	Nonconforming structures
19.55.035	Nonconforming site improvements

19.55.005 User Guide

This chapter establishes when and under what circumstances *nonconforming* aspects of a *use, structure* or *site improvement* must be brought into conformance with this Code. You need to consult the provisions of this chapter only if there is some aspect of a *use, structure* or *site improvement* that is not permitted or does not comply with this Code. [Ord. 268 § 2, 1999]

19.55.010 Purpose

The purpose of this chapter is to establish the legal status of a *nonconformance* by creating provisions through which a *nonconformance* may be maintained, altered, reconstructed, expanded or terminated. [Ord. 268 § 3, 1999]

19.55.015 General

1. This chapter applies to any *use, structure* or *site improvement* that does not conform to this Code as adopted or as amended.
2. If a *use, structure* or *site improvement* conformed to the applicable Zoning Code in effect at the time the *use, structure* or *site improvement* was constructed or initiated, that *use, structure* or *site improvement* may continue and need not be brought into conformance with this Code unless a provision of this Chapter requires conformance.
3. No *nonconformance* may in any way be enlarged, expanded, increased, intensified, compounded or made greater, except as permitted in this chapter. If a *use, structure* or *site improvement* is on or within 100 feet of any *critical area*, the provisions of BMC Chapter 19.40 apply.
4. The provisions of this chapter do not supersede or relieve a property owner from compliance with:
 - A. The requirements of the City of Burien *Construction Code*; or
 - B. The provisions of this Code beyond the specific *nonconformance* addressed by this chapter.
5. Any valid conditional use, variance, or permit approved under BMC Chapter 19.65 prior to the date that the *use, structure* or *improvement* became non-conforming shall be permitted to continue in accordance with such approval.
6. If this Code requires that a *use* or *structure* be reviewed by any of the processes described in BMC Chapter 19.65, a proposal for expansion or modification of an existing *use, structure* or *site improvement* shall also be reviewed pursuant to such process if:

- A. The area devoted to the *use* and/or *structure* is expanded by more than 10 percent; or
- B. The *Director* determines that the change or alteration will have significantly more or different impact on the surrounding area than does the present development. In determining impact, the *Director* shall consider the scale of the proposed expansion or modification, and expected changes to traffic, noise, hours of operation, and parking. [Ord. 268 § 4, 1999]

19.55.020 Abatement of illegal uses, structures or sites

Any *use*, *structure* or *site improvement* that did not comply with the Zoning Code requirements in effect at the time it was established or constructed, and does not comply with this Code as now or hereafter amended, is illegal and shall be discontinued, terminated or brought into conformance with the provisions of this Code as now or hereafter amended. [Ord. 268 § 5, 1999]

19.55.025 Nonconforming and continuing uses

A *nonconforming* or *continuing use* may be continued and is transferable to a new owner or tenant, subject to the following conditions:

1. If a *use* is a *nonconforming* or *continuing use*, the applicable use zone chart in BMC Chapter 19.15 does not establish what regulations of this Code apply to that *use* in that zone. To determine which regulations apply, the *Director* will select the use in that zone that is most similar to the *nonconforming* or *continuing use*.
2. The following applies only to a *continuing use*:
 - A. The *gross floor area* and the area devoted to outdoor use, activity or storage may be expanded under the following conditions:
 - i. Such expansion shall comply with applicable development regulations in BMC Chapter 19.15 (including but not limited to setbacks and landscaping); and
 - ii. Expansion may occur on contiguous *lots* if on November 1, 1999, the *continuing use* and contiguous *lot* were owned by the same property owner and have remained joined through any ownership transfer.
 - B. A *continuing use* must be brought into conformance or discontinued if the *use* has ceased for 12 or more consecutive months.
3. Except as authorized in BMC 19.55.025.4 or .5, any *nonconforming use* that does not qualify as a *continuing use* under BMC 19.55.025.2 must be brought into conformance or discontinued if:
 - A. The *applicant* is increasing the *gross floor area* of any *structure* that houses or supports the *nonconforming use*; or
 - B. The *applicant* is increasing the area devoted to outdoor use, activity or storage associated with the *nonconforming use*; or
 - C. The *nonconforming use* has ceased for 12 or more consecutive months; or
4. The *Director*, through a Type 1 review, may allow up to a 10 percent increase in the area of land or *structure* occupied by the *nonconforming use* on the date of adoption of this Code, or any

subsequent amendments. In deciding whether to grant such request, the *Director* shall use the criteria in BMC 19.55.025.5.

5. The City Council, through the Type 3 review process, may modify or waive any of the provisions in BMC 19.55.025.2 or 3, based on a finding that the proposal:

- A. Does not create an expansion that would be detrimental to adjacent properties; and
- B. Improves aspects of safety or function of the *nonconformance*. [Ord. 268 § 6, 1999]

19.55.030 Nonconforming structures

A *nonconforming structure* may remain and be used, provided that:

1. A *nonconforming structure* shall not be expanded unless the expansion conforms to the regulations of this Code or as follows:
 - A. A *structure* in an RS or RM zone with *nonconforming setbacks* may extend horizontally and vertically along existing *building setbacks* (see Figure 19.55-1) if the proposed expansion:
 - i. Will not endanger public safety; and
 - ii. Will not interfere with adopted City plans or regulations requiring additional *right-of-way* width; and
 - iii. Is not an expansion of a *setback* previously authorized by a City of Burien variance process or Type 1, 2, or 3 land use review. In this case, a new variance or Type 1, 2 or 3 land use review application is required; and
 - iv. Will not create any new *nonconformance* in *height* or *setback*.
 - B. An increase in nonconforming building coverage and/or impervious surface coverage is permitted if the additional storm drainage runoff created by the new building coverage and/or impervious surface coverage is collected, transported and treated in accordance with the Surface Water Design Manual as adopted by the City of Burien.
2. If moved, the *structure* shall be made to conform to this Code;
3. If the *structure* is damaged or destroyed, it may be reconstructed or repaired provided that:
 - A. The fire or other casualty was not intentionally caused by the *applicant* or owner of the *structure*; and
 - B. The damage or destruction was not due to abatement or voluntary demolition beyond 50% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll; and [Ord. 523 § 1, 2009]
 - C. Except as allowed in BMC 19.55.030.1, the extent of the previously existing *nonconformance* is not increased and a new *nonconformance* is not created; and

- D. A complete building permit application for repair or reconstruction is submitted within 12 months of the occurrence of the damage or destruction; and
 - E. Construction conforms with the provisions of the City of Burien *Construction Code* in effect at the time when the complete building permit application is submitted.
4. The City Council, through the Type 3 review process, may modify or waive any of the provisions in Sec. 19.55.030.1 through 3 above, based on a finding that the proposal:
- A. Does not create an expansion that would be detrimental to adjacent properties; and
 - B. Improves aspects of safety or function of the *nonconformance*.

5. Any *nonconforming structure* for which a valid building permit has been issued prior to the effective date of this Code as now or hereafter amended, may be completed and used in accordance with the provisions of this Code as now or hereafter amended, provided that such *structure* is completed essentially in accordance with the plans and specifications on which the building permit was issued. [Ord. 268 § 7, 1999]

19.55.035 Nonconforming site improvements

A *nonconforming site improvement* shall be made conforming if:

1. The *structure* or *use* associated with the *nonconforming site improvement* is enlarged or expanded;
2. The *use* associated with the *nonconforming site improvement* changes to a new *use* that requires different and greater *site improvements*. For example, if a new *use* requires more parking under this Code than the old *use*, then the additional parking stalls required for the new *use* must be provided.
3. The *structure* associated with the *nonconforming site improvement* is damaged or destroyed by fire or other casualty, and the valuation of the damage exceeds 50 percent of the current King County assessment value for the land and improvements, as determined by BMC Title 15 (definition of valuation);
4. The *Director* may modify or waive any of the provisions in Sec. 19.55.035.1 through 3 above, based on a written finding that the proposal:
 - A. Would not be detrimental to adjacent properties; and
 - B. Complies with the purpose and intent of the *site improvement* that is *nonconforming*;

The *Director's* decision may be appealed to the Hearing Examiner using the appeal process established for an appeal of a Type 1 decision.

5. Any *nonconforming site improvement* for which a valid building permit has been issued prior to the effective date of this Code, may be completed and used in accordance with the provisions of this Code, as amended, provided that the *site improvement* construction is completed in accordance with the plans and specifications on which the building permit was issued. [Ord. 268 § 8, 1999]

FIGURE 19.55-1

